

Members

Sen. Joseph Zakas, Chairperson  
Sen. Connie Lawson  
Sen. Rose Ann Antich  
Rep. Jonathan Weinzapfel, Vice-Chairperson  
Rep. Ed Mahern  
Rep. Ralph Foley  
Mr. James W. Martin  
Ms. Cynthia Boll  
Mr. Vincent Heiny  
Mr. Robert Christopher  
Ms. Janet Ellis  
Mr. Terry Harris  
Ms. Diane Bender  
Mr. John Chappell



## PROBATE CODE STUDY COMMISSION

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Authority: IC 2-5-16-3

### MEETING MINUTES<sup>1</sup>

Meeting Date: September 21, 1999  
Meeting Time: 1:00 P.M.  
Meeting Place: State House, 200 W. Washington St., 128  
Meeting City: Indianapolis, Indiana  
Meeting Number: 1

**Members Present:** Sen. Joseph Zakas, Chairperson; Sen. Connie Lawson; Sen. Rose Ann Antich; Rep. Jonathan Weinzapfel, Vice-Chairperson; Rep. Ralph Foley; Mr. James W. Martin; Mr. Robert Christopher; Ms. Janet Ellis; Mr. Terry Harris; Ms. Diane Bender.

**Members Absent:** Rep. Ed Mahern; Ms. Cynthia Boll; Mr. Vincent Heiny; Mr. John Chappell

The meeting convened at 1:10 p.m.. The first order of business was an introduction of Commission members and staff. Sen. Zakas indicated that he wanted the Commission to discuss how it could make a broad, meaningful change in the probate code. The Commission discussed the legislation that it recommended last year and why the legislation did not pass the General Assembly. Preparing a probate omnibus bill for the

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

next session was discussed. Ms. Diane Bender suggested that the Commission look at how living trusts fit into the probate code.

The Commission set its next meeting for October 19, 1999 at 1:00 p.m.

Ms. Anne Haley, staff attorney for the Commission, reviewed the legislation recommended by the Commission last year and the progress of the legislation during the last legislative session.<sup>2</sup>

Mr. Jeff Kolb, attorney, Evansville presented the initiatives of the Probate Trust and Real Property Section of the Indiana State Bar Association for changing the probate code.<sup>3</sup> Mr. Kolb explained that the Section is also working on a change in the rule of perpetuities to allow for a "dynasty trust". The Section is also looking at a form of trust, currently available in Alaska and Delaware, to avoid claims and creditors. These trusts are currently being sold to Indiana residents.

Sen. Zakas asked the Commission if it had other business to discuss. Rep. Foley related that a judge in his area has suggested that the law be changed so that a felon can serve as a guardian of the person. The judge indicated that in at least one situation he encountered a felon was the best family member to serve as the guardian of the person.

The Commission discussed how to prioritize the issues to be considered by the Commission. The Commission discussed initiative number six of the Section report. Mr. Martin stated that contrary to what advertising leads people to believe, there is no concrete basis for pursuing trusts by creditors. He indicated this change would give the public some guidance. Mr. Martin and Mr. Harris agreed that they prefer to be able to go after the trust assets first and then the nonprobate transfers. Sen. Zakas asked if there will be more holding of non-probate assets outside of the trust if we change this. Ms. Ellis stated that in her opinion there will not be any abuse.

The Commission discussed the first initiative in the Section report concerning creating new penalties for refusing to accept the authority of an attorney in fact under IC 30-5-9-9. Rep. Foley indicated that this is usually a problem with out of state institutions that don't care what Indiana law says. Ms. Diane Bender suggested that a person be penalized for "unreasonably" refusing the authority of an attorney in fact. The Commission discussed the California statute on this issue. Sen. Zakas directed counsel to research what other states do regarding penalties for refusing the authority of an attorney in fact. Sen. Zakas directed counsel to prepare drafts of the legislation recommended by the Commission last year that were not adopted by the General Assembly and drafts of all the initiatives contained in the Section report for discussion at the next meeting.

The meeting adjourned at 2:40 p.m.

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<sup>2</sup> The summary is on file at the Legislative Information Center. See footnote 1.

<sup>3</sup> A copy of the report is on file in the Legislative Information Center. See footnote 1.